IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

RCRev..No. 277 of 2007()

RCA.11/2005 of DISTRICT COURT, KALPETTA
RCP.4/2004 of MUNSIFF- MAGISTRATE"S COURT, SULTHAN BATHERI
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REVISION PETITIONER/APPELLANT/RESPONDENT:

KURUDANKANDY IBRAHIM,
S/O. KUNHABDULLA, KURUDANKANDY HOUSE,
S.BATHERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT: RESPONDENT/PETITIONER:

MR. K.P.MOHAMMED ALI,
S/O. MAMUKUTTY HAJI, KOZHIPARAMBATHU HOUSE,
MUNNIYOOR AMSOM, DESOM, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV.SMT.T.D.RAJALAKSHMI

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

HARUN-UL-RASHID,JJ.

R.C.R. NO. 277 OF 2007

Dated 20th August, 2007.

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner and the landlord, who is one of the co-owners of the tenanted building, is the respondent. The Rent Control Petition was moved under Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The tenant resisted the application, contending that the building was already surrendered to the landlord and therefore, the R.C.P is not maintainable.

2. The brief facts of the case are the following. The tenant took a large building consisting of 40 rooms under a lease agreement dated 10.2.1987 from the landlord herein and other co-owners. The monthly rent was Rs.12,000/-, which was subsequently enhanced to Rs.16,000/- per month. The R.C.P was filed on 25.2.2004, alleging that the building which was housing a nursing home called "Priya Nursing Home", was not being used for any purpose for more than six months without any reasonable

cause. The tenant resisted the application, contending that his son-in-law was running the hospital and on his death the hospital was stopped and the tenanted premises were surrendered to the owners of the building in October, 2002 itself. Thereafter, he ceased to occupy the petition schedule building. Therefore, the R.C.P is liable to be dismissed, it was contended.

3. From the side of the landlord, Pws. 1 and 2 were examined and Ext.A1 rent deed was marked. On behalf of the tenant, Rws.1 to 4 were examined. The Commissioner's report and sketch were marked as Exts.C1 and C2. The Rent Controller found that the tenanted building was not surrendered in favour of the landlord and it was not occupied without reasonable cause for more than six months. Therefore, the application was allowed under Section 11(4)(v) of the Act. The Appellate Authority also affirmed the said decision. Hence this revision.

4. The Appellate Authority as well as the Rent Controller mainly relied on the Commissioner's report to find that the building was still in the possession of the tenant. The Commissioner reported that the name board "Priya Nursing Home" was very much in possession and the rooms were all remaining locked. But, their classification as general wards, X-ray rooms etc., remained as such, as evident from the boards on their doors/entrance. The watchman opened the shutter and the Commissioner and those

accompanied him went upstairs. In the upstair portion also various boards indicating pharmacy, enquiry, bills etc., were found to be in position. All the rooms and the corridors were filled with filth and dirt. Many hospital equipments, wheel-chairs, stretchers were also found stored in some of the rooms. The boards showing operation theatre, ICU, labour room etc., were also found to be in their position. Based on the above materials in the report of the Commissioner, the Appellate Authority held that the rooms continued to be in the possession of the tenant. But, the tenant set up a case that the watchman was employed by the landlord. The watchman himself was examined. But, the Appellate Authority felt that the watchman was won over and therefore, his evidence cannot be relied on. The same being a finding of fact, we cannot interfere with the same.

5. When the matter was heard by us, the learned counsel appearing for the tenant urged only one point before us. He submitted that an I.A was filed before the appellate court, producing some documents filed by one of the co-owners before the local authority for remission of building tax payable to the local Panchayat. In them it is stated that the building was remaining vacant for several years without any tenants. But, it is not clear from the appellate judgment, whether that I.A was allowed and the documents were received in evidence. Those documents were not annexed

to the appellate judgment. Further, we find that there was no argument addressed before the appellate authority based on such documents. We also notice from the copy of the petition handed over to us, that those documents were filed before the Panchayat either in 2004 or 2005, evidently after the filing of the R.C.P. So, the statement made to claim remission of building tax cannot be taken advantage of by the tenant. Further, as stated earlier, it is not a point raised before the Appellate Authority or considered by it. The only point of dispute between the parties adjudicated by the lower authorities was whether the building has actually been surrendered in October, 2002 or the tenant continued to be in occupation of the same. Both the authorities, based on the evidence before them, concurrently held that the building was never surrendered to the landlord. If there was surrender, the tenant would have definitely received receipt, as he has got a claim that substantial amount had been paid by way of advance. This view taken by the Appellate Authority is a plausible view on the facts of the case, with

which we cannot interfere under Section 20 of the Act.

In the result, the Rent Control Revision fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

Nm/